

**Commonwealth of Kentucky
Workers' Compensation Board**

OPINION ENTERED: June 1, 2018

CLAIM NO. 199969939

CZAR COAL CORP AND
ARROWOOD INDEMNITY CO.

PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE**

DAVID PACK AND
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Czar Coal Corp. and Arrowood Indemnity ("Czar") appeal from the Opinion and Order rendered on November 27, 2017 by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). The ALJ found compensable David Pack's ("Pack") treatment with Lyrica, Tramadol, and Celecoxib prescribed by Dr. John Triplett. Czar also appeals

from the January 11, 2018 order denying its petition for reconsideration.

Czar argues the ALJ erred in finding compensable Pack's treatment with Lyrica, Tramadol, and Celecoxib prescribed by Dr. Triplett. The ALJ's decision is supported by substantial evidence, and a contrary result is not compelled; therefore, we affirm.

Pack filed a Form 101 on July 22, 1999, alleging a rock fell fourteen feet, striking him on the top of his head, neck, right shoulder, and right arm as he was working as a roof bolter in an underground coalmine. He also alleged he had depression due to his injury. Pack settled his claim against Czar on March 20, 2002. In the Form 110-I, approved by Hon. John B. Coleman, Administrative Law Judge, Czar agreed to pay Pack a lump sum payment of \$7,500.00, and \$549.84 per week for twenty-five years beginning on March 1, 2002. Medical benefits were not waived as part of the settlement.

On March 19, 2014, Czar moved to reopen the claim and filed a medical dispute challenging Pack's treatment with Lyrica and Tramadol prescribed by Dr. Triplett. Czar supported its dispute with the utilization review report of Dr. Albert Baldera who stated treatment with those medications is neither reasonable nor necessary for treatment

of Pack's work injuries. He stated his opinion was based upon the Official Disability Guidelines ("ODG").

The reopening was assigned to Hon. Chris Davis, Administrative Law Judge ("ALJ Davis"). In his decision dated November 4, 2014, ALJ Davis noted Dr. Timothy Kriss treated Pack in 2000 and 2001 for his work injuries. He also noted Dr. Kriss opined Pack sustained a work-related injury, which was severe and complex. ALJ Davis acknowledged Dr. Henry Tutt, who examined Pack at Czar's request, opined Pack had never sustained a work-related injury. ALJ Davis rejected the opinions of both Drs. Baldera and Tutt. He determined Pack had indeed sustained work-related injuries, and treatment with Tramadol and Lyrica is reasonable and necessary.

Czar again filed a motion to reopen on December 12, 2016, to challenge treatment with Lyrica, Tramadol and Celecoxib. In support of its motion, Czar attached the utilization review report of Dr. Terry Troutt who determined treatment with these medications is neither reasonable nor necessary. Dr. Troutt cited to the ODG in support of his opinion. In his review on appeal of Dr. Troutt's utilization review, Dr. Shahid Khan supported the denial of Pack's treatment with the contested medications.

Czar also filed the July 12, 2017 report of Dr. Ronald Burgess who evaluated Pack at its request. Dr. Burgess stated Pack's complaints do not fall within the ulnar nerve distribution. He opined Pack has never had cubital tunnel syndrome. He additionally stated any treatment for ulnar nerve distribution, including Lyrica, Tramadol, or non-steroidal anti-inflammatories is not indicated. He stated Pack should use only over-the-counter medications.

Czar deposed Pack on May 19, 2017. Pack primarily resides in Pikeville, Kentucky, but spends some of his time in North Carolina where his wife is employed. He testified he has not worked since 2001 or 2002. He returned to work briefly in the coal mining industry after his accident, but was unable to continue. He receives Social Security Disability benefits. He testified he continues to have pain in his neck, right shoulder, right arm and right hand due to the work injury. He also stated he has had multiple surgeries for unrelated conditions.

Pack testified he has taken Tramadol, Celebrex, and Lyrica, prescribed by Dr. Triplett, for thirteen to fourteen years. He stated the medication reduces his burning, tingling, stiffness, pain and throbbing which he continues to experience especially with any repetitive or increased activity. He stated he continues to have pain on a daily

basis. He also stated he has feelings of sadness and depression.

Pack filed treatment records from Dr. Triplett from February 10, 2016 through August 17, 2017. Dr. Triplett noted Pack has complaints of neck pain with stiffness and impaired range of motion. He also complains of right posterior shoulder pain radiating into his right arm and neck. Dr. Triplett noted Pack takes Celebrex, Celecoxib, Hydrocodone, Lotrel, Lyrica, Sumatriptan, Testosterone Cyplonate, Tramadol and Zolpidem. Dr. Triplett stated Pack has taken Lyrica or Gabapentin since 1999 for right arm pain secondary to cubital tunnel syndrome. He stated Pack's pain is a result of his work injury. Triplett has also injected Pack's right trapezius muscle for muscle spasms and flare-ups.

The ALJ issued an Opinion and Order on November 27, 2017. The ALJ noted Pack has done well with the contested medications. The ALJ specifically found as follows:

In a post-judgment Motion to Reopen to Assert a Medical Fee Dispute, the Defendant Employer has the burden of proving that the contested medical expenses and/or proposed medical procedure is unreasonable or unnecessary, while the Plaintiff maintains the burden of proving that the contested medical expenses and/or proposed medical procedure is causally related treatment for the effects of the work-related injury. Mitee

Enterprises vs. Yates, 865 SW2d 654 (KY 1993) *Square D Company vs. Tipton*, 862 SW2d 308 (KY 1993) *Addington Resources, Inc. vs. Perkins*, 947 SW2d 42 (KY App. 1997). In addition, the legislature's use of the conjunctive "and" which appears in subsection 1 of KRS 342.020 "cure and relief" was intended to be construed as "cure and/or relief". *National Pizza Company vs. Curry*, 802 SW2d 949 (KY 1991).

The Defendant Employer has moved to reopen this claim to challenge the reasonableness and necessity of Lyrica, Tramadol, and Celecoxib. After review of the evidence, it is determined that the opinion of Dr. Triplett is persuasive in that Lyrica is one of the medications used to treat nerve inflammation and that Ultram is used to treat moderate pain. He added that the Plaintiff had done well with these two medications, had shown no signs of abuse, and had not failed his narcotic contract. The ALJ is persuaded by this opinion along with the consistent and supportive testimony of the Plaintiff. Therefore, the contested medications are found to be reasonable and necessary for the cure and/or relief of the work injury and, therefore, are compensable.

ORDER

IT IS HEREBY ORDERED AND ADJUGED[sic] AS FOLLOWS:

The Motion to Reopen filed by the Defendant Employer, Czar Coal Corp, and/or its insurance carrier, to assert a Medical Fee Dispute challenging the reasonableness and necessity of Lyrica, Tramadol, and

Celecoxib is hereby resolved in favor of the Plaintiff. The challenged medical expenses are found to be compensable.

Czar filed a petition for reconsideration arguing the ALJ erred by failing to "fully consider the ramifications" of the medical evidence it had filed. It argued the contested medications are used for treating conditions other than those reported by Pack. In an order denying the petition for reconsideration issued on January 11, 2018, the ALJ stated as follows:

This matter is before the ALJ upon Petition for Reconsideration filed by the Defendant. The Defendant has urged the ALJ to fully consider the ramifications of the utilization review by Dr. Troutt, the records review by Dr. Khan, and the IME of Dr. Burgess. The ALJ has reviewed this evidence again and still finds that the testimony of the Plaintiff along with the records of the treating physician, Dr. Tripplett[sic] are more convincing in that the Plaintiff is doing well with this combination of medicaines[sic] and would like to continue. The ALJ finds that the Petition is a re-argument of the merits of the case and again declines to disturb this medication regimen. The Petition is therefore hereby **DENIED**.

Regarding the ALJ's determination of the compensability of Lyrica, Tramadol and Celecoxib, we note that notwithstanding the holding in C & T Hazard v. Chantella Stollings, et al., 2012-SC-000834-WC, 2013 WL 5777066 (Ky.

2013), an unpublished case from the Kentucky Supreme Court, a long line of reported decisions establishes in a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving entitlement to the relief sought, except that the claimant bears the burden of proving work-relatedness. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993).

The question on appeal is therefore whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the

evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

In this instance, the ALJ determined treatment with Lyrica, Tramadol, and Celecoxib is reasonable and necessary.

He explained the reasons for his determination, and specifically noted that based upon Dr. Triplett's records and Pack's testimony, the medications assist with relief from the effects of his work injury. We note the ALJ's determination is consistent with the previous determination rendered by ALJ Davis in 2014.

Czar essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, supra. Czar merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra.

While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., supra; Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). The ALJ's analysis of the evidence in this claim sufficiently supports his determination. We do not believe the ALJ abused his discretion or committed reversible error.

The record supports the ALJ's decision, and a contrary result is not compelled, therefore we affirm.

Accordingly, the Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, on November 27, 2017, and the order on reconsideration issued on January 11, 2018, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS AND FILES A SEPARATE OPINION.

RECHTER, Member. I agree with the majority's conclusion that Dr. Triplett's opinion constitutes substantial evidence to support the ALJ's decision, and the medical opinions submitted by the employer do not compel a finding that the contested medications are unnecessary or unreasonable. I write separately to acknowledge the employer's more specific argument concerning Dr. Triplett's admission, in his January 4, 2017 office note, that Lyrica is not recognized for the treatment of cubital tunnel syndrome. Dr. Triplett explained the lack of specific medication regimens for "pain syndromes", and offered his medical opinion as to why nerve inflammation medications, such as Lyrica, offer relief. Cf. Square D. Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993) (proposed procedure was unreasonable and therefore non-compensable because it was controversial within the medical community,

severe, dangerous and marginally effective). The ALJ was entitled to rely upon Dr. Triplett's rationale.

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